

**UNITED STATES DISTRICT COURT FOR
THE WESTERN DISTRICT OF VIRGINIA
Roanoke Division**

**VIRGINIA POLYTECHNIC INSTITUTE
AND STATE UNIVERSITY,
Plaintiff / Counterclaim Defendant,**

v.

**HOKIE REAL ESTATE, INC.,
Defendant / Counterclaim Plaintiff,**

v.

LOCKE WHITE and

**LAWRENCE HINCKER,
Counterclaim Defendants.**

Case No. 7-10-cv-00466

MOTION TO DISMISS

Pursuant to Federal Rule of Civil Procedure 12(b)(6), Plaintiff Virginia Polytechnic Institute and State University ("Virginia Tech") and Counterclaim Defendants Locke White and Lawrence Hincker respectfully move this court to dismiss the counterclaims brought by Defendant/Counterclaim Plaintiff Hokie Real Estate, Inc. ("Hokie Real Estate"). Virginia Tech, Locke White, and Lawrence Hincker move to dismiss these counterclaims for the following reasons:

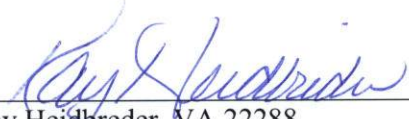
- (1) Eleventh Amendment Immunity protects Virginia Tech, White, and Hincker from suit;
- (2) Defendants White and Hincker are similarly protected from suit by qualified immunity;

- (3) Hokie Real Estate's counterclaims are substantively infirm and, even assuming the allegations in the counterclaims are true, the claims fail as a matter of law.

The reasons for this Motion are stated more fully in an accompanying Memorandum.

Respectfully submitted,

This 18th day of April, 2011


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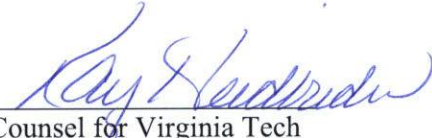
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CERTIFICATE OF SERVICE

I hereby certify that on the 18th day of April, 2011, I electronically filed the foregoing with the Clerk of the Court using the CM/ECP system which will send notification of such filing to the following:

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